No. 91-480

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,
Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

On Petition for Writ of Certiorari to the California Supreme Court

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF THE LABORERS TRUST FUNDS AND OPERATING ENGINEERS TRUST FUNDS IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Laborers Health and Welfare Trust Fund for Southern California; Construction Laborers Pension Trust for Southern California; Laborers Training and Retraining Trust for Southern California; and Construction Laborers Vacation Trust for Southern California ("Laborers Trust Funds"); and Operating Engineers Pension Trust; Operating Engineers Health and Welfare Fund; Operating Engineers Vacation-Holiday Savings Trust; and Operating Engineers Training Trust ("Operating Engineers Trust Funds") move for leave to file the attached brief *amici curiae* in support of granting the petition for certiorari in this case.

The consent of the attorney for the petitioner has been obtained. The consent of the attorney for the respondent was requested and refused.

The Laborers Trust Funds and Operating Engineers Trust Funds have an interest in this case since they collect a substantial portion of the contributions owed from employers through the use of the mechanics lien law found preempted by the court below. If this decision is allowed to stand, they may lose millions of dollars annually in contributions which are needed to fund the benefits to tens of thousands of participants and their families.

The Laborers Trust Funds and the Operating Engineers Trust Funds wish to raise the following arguments not raised, or not discussed in detail by petitioner, and not dealt with by the court below:

1) The conflict among the lower courts not only as to whether mechanics liens are preempted, but the differing and conflicting *rationales* for such preemption.

2) The serious financial effect on trust funds such as the Laborers Trust Funds and the Operating Engineers Trust Funds, and the beneficiaries who rely on them.

3) The disruption of the interrelated network of state and federal laws protecting wages and fringe benefits which will result from the holding below.

4) The intent of Congress to preserve state remedies for collection of wages and fringe benefits.

Respectfully submitted,

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Dated: October 15, 1991

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On Petition for Writ of Certiorari to the California Supreme Court

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BRIEF *AMICI CURIAE* OF THE LABORERS TRUST FUNDS AND OPERATING ENGINEERS TRUST FUNDS IN SUPPORT OF PETITIONER

INTEREST OF AMICI

The Laborers Health and Welfare Fund for Southern California; Construction Laborers Pension Trust for Southern California; Construction Laborers Vacation Trust for Southern California; and Laborers Training and Retraining Trust for Southern California ("Laborers Trust Funds"); and the Operating Engineers Pension Trust; Operating Engineers Health and Welfare Fund; Operating Engineers Vacation Holiday Savings Trust; and Operating Engineers Training Trust ("Operating Engineers Trust Funds"), *amici curiae*, urge that the Petition for a Writ of Certiorari to the California Supreme Court of Carpenters Southern California Administrative Corporation be granted. The Laborers Trust Funds and the Operating Engineers Trust Funds are each multi-employer, employee benefit plans, as defined in

the Employee Retirement Income Security Act (ERISA) §§ 2(3) and 2(37)(A), 29 U.S.C. §§ 1002(3) and 1002(37)(A).

The Laborers Trust Funds and the Operating Engineers Trust Funds rely upon contributions from participating employers to fund benefits provided by each plan, and each utilizes the mechanics liens allowed by California Civil Code § 3111, and similar remedies which may be affected by this decision, as the primary method of collecting delinquent contributions. The Laborers Trust Funds have approximately 26,000 participants in Southern California. The Operating Engineers Trust Funds have approximately 38,000 participants in Southern California. Together, these trust funds collect several million dollars annually through the use or threat of mechanics liens. If the decision of the California Supreme Court is not reversed, this remedy to recover contributions to *amici* will be eliminated, significantly impacting their ability to provide the benefits promised under each plan.

SUMMARY OF ARGUMENT

There is a split of authority among the state high courts and federal courts of appeals as to whether state mechanics liens are preempted by ERISA. This split is not only as to whether such liens are preempted, but also as to the rationale and extent of such preemption. The state mechanics liens are but one part of a state and federal network of laws designed to place the highest priority on payment of fringe benefit contributions, along with wages, which Congress intended to strengthen by the enactment of ERISA. The court below ignored relevant legislative history, and focused instead on legislative history irrelevant to this question. The decision of the California Supreme Court, and other courts following its lead, would destroy the complementary design of this network of laws, contrary to the express intent of Congress. The result will be a serious weakening of the

financial strength of employee benefit plans and the benefits they provide to millions of American workers.

REASONS THE WRIT SHOULD BE GRANTED

I. THE GUIDANCE OF THIS COURT IS NEEDED TO RESOLVE A SPLIT OF AUTHORITY AMONG LOWER APPELLATE COURTS ARISING FROM DIVERGENT INTERPRETATIONS OF THIS COURT'S DECISIONS ON ERISA PREEMPTION

In the case below, the California Supreme Court held that California Civil Code § 3111[1] was preempted by ERISA § 514, 29 U.S.C. § 1144. *Carpenters Southern California Administrative Corporation v. El Capitan Development Co.*, 53 Cal. 3d 1041, 282 Cal. Rptr. 277, 811 P.2d 296 (1991). More recently, a divided panel of the Ninth Circuit Court of Appeals similarly held § 3111 to be preempted. *Sturgis v. Herman Miller, Inc.*, —— F.2d ——, 60 U.S.L.W. 2185 (9th Cir. 1991) (petition for rehearing pending).

Other courts have joined California in finding similar state mechanics lien laws to be preempted.[2] On the other

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[1] California Civil Code § 3111 provides:

> For the purposes of this chapter [relating to mechanics liens], an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on a particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement.

[2] *Iron Workers Mid-South Pension Fund v. Terotechnology Corp.*, 891 F.2d 548 (5th Cir.), *cert. denied*, 110 S.Ct. 3272 (1990) (Louisiana mechanics lien law); *McCoy v. Massachusetts Institute of Technology*, 760 F. Supp. 12 (D. Mass 1991); *Laborers National Pension Fund v. Woodrow Wilson Construction Co.*, 581 So.2d 387 (La. App. 1991). *Edwards v. Bethlehem Steel Corp.*, 554 N.E.2d 833 (Ind. App. 1990); *Prestridge v. Shinault*, 552 So.2d 643 (La. App. 1989).

hand, some courts have upheld mechanics lien laws against claims of ERISA preemption.[3]

The courts are split, not only as to whether or not mechanics lien laws are preempted, but as to the rationale behind their decisions. Each court has seized upon different statements in the opinions of this Court to reach different and conflicting rationales to support their decisions.

In the decision below, the California Supreme Court emphasized that § 3111, as distinguished from the general mechanics lien section, § 3110,[4] was "specifically designed to affect employee benefit plans." Relying upon

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[3] *Plumbers Local 458 Holiday Vacation Fund v. Immel*, 151 Wis. 2d 233, 445 N.W.2d 43 (Wis. App. 1989); *see also Sheet Metal Workers Pension Plan v. Columbia Savings & Loan Association*, 221 Cal. App. 3d Supp. 21, 270 Cal. Rptr. 608 (1990) (overruled by *El Capitan*); *Carpenters Health & Welfare Trust Fund v. Parnas*, 176 Cal. App. 3d 1196, 222 Cal. Rptr. 668 (1986) (overruled by *El Capitan*). In *Laborers National Pension Fund, supra*, note 2, the lien by the union for dues and savings was found *not* to be preempted while the liens by ERISA trust funds were found to be preempted. 581 So.2d 387, 392.

[4] California Civil Code § 3110 provides:

> Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services on, or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams, or power contributing to a work of improvement shall have a lien upon the property upon which they have bestowed labor or furnished materials or appliances or leased equipment for the value of such labor done or materials furnished and for the value of the use of such appliances, equipment, teams or power whether done or furnished at the instance of the owner or of any person acting by his authority or under him as contractor or otherwise. For the purposes of this chapter, every contractor, subcontractor, sub-contractor, architect, builder, or other person having a charge of a work of improvement or portion thereof shall be held to be the agent of the owner.

language of this Court in *Mackey v. Lanier Collection Agency & Service*, 486 U.S. 825, 829, 108 S.Ct. 2182, 100 L.Ed. 2d 836 (1988),[5] the California Supreme Court found this to be determinative.

The Wisconsin Supreme Court, relying on the same language in *Mackey*, distinguished the Wisconsin mechanics lien law from that of California, since it was not specifically directed to employee benefit plans. *Plumbers Local 458 Holiday Vacation Fund v. Immel*, 151 Wis. 2d 233, 445 N.W.2d 43, 46 (Wis. App. 1989).

The Indiana Supreme Court, however, found its mechanics lien law to be preempted despite the fact that like the Wisconsin law, it did not mention employee benefit plans at all and was brought by individual employees rather than the plans. *Edwards v. Bethlehem Steel Corp.*, 554 N.E.2d 833, 836-37 (Ind. App. 1990). The Indiana court relied on *Pilot Life Insurance v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987), and never mentioned *Mackey*. The Louisiana Court of Appeals similarly found its Public Works Act (the equivalent of a mechanics lien on public works) preempted despite the fact that the law did not mention ERISA trust funds. *Laborers National Pension Fund v. Woodrow Wilson Construction Co.*, 581 So.2d 387, 391 (La. App. 1991).

Each of these courts purports to rely on decisions of this Court in arriving at their decision. However, the rationales used, and the results arrived at, are widely divergent. Especially unclear is the fate of mechanics lien laws (or indeed *any* creditors' remedy) of general application which may be used by ERISA funds. In Wisconsin such laws are not preempted. In Indiana and Louisiana, they are preempted. In California, this is still an open

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[5] "[W]e have virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are preempted under § 514(a)."

question.[6] The availability of these remedies is of vital importance to ERISA plans. The guidance of this Court is needed to establish a uniform approach to the preemption of mechanics liens, and other creditor remedies, available for the collection of delinquent contributions to ERISA plans.

II. THE MECHANICS LIENS FOUND PREEMPTED BY THE COURT BELOW ARE AN ESSENTIAL TOOL ASSURING CONTRIBUTIONS TO PROVIDE BENEFITS TO WORKERS IN THE CONSTRUCTION INDUSTRY

The effect of eliminating mechanics liens from the remedies available to trust funds in collecting contributions should not be underestimated. The U.S. Census Bureau reports nearly 25 billion dollars paid towards fringe benefits by employers in the construction industry in 1987. U.S. Census Bureau, Census of Construction Industries, Geographic Area Series, United States Summary, Report No. CC87-A-10, Table 5 at page 10. Contributions to fringe benefit funds constitute a major portion of the overall compensation of construction workers. The Census Bureau report cited above shows approximately one-fifth of compensation paid through fringe benefits for all employees in the construction industry. In the contract under which the Laborers Trust Funds operate, approximately 36% of compensation is paid through fringe benefit contributions. In the contract under which the Operating Engineers Trusts operate, approximately 26.5% of compensation is paid through fringe benefit contributions.

The collection of delinquent employer contributions is considered by the Department of Labor to be an affirmative duty of trustees. Prohibited Transaction Class Exemption 76-1, 41 F.R. 12740 (Dep't of Labor,

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[6] *Amici* have, in fact, begun filing mechanics liens under the general section of the mechanics lien law, § 3110, rather than § 3111, since *El Capitan*. Whether these liens are preempted has not yet been tested in the California courts.

3/25/76). "Plans which do not establish and implement collection procedures which are reasonable, diligent and systematic may be found to be engaging in prohibited transactions under sections 406 and 407(a) of the [Employee Retirement Income Security] Act and section 4975(c)(1) of the [Internal Revenue] Code in failing to collect delinquent contributions." *Id.* at 12741. Among the "reasonable, diligent and systematic methods for the collection of delinquent employer contributions" approved by the Department of Labor are "the purchase of bonds by employers to guarantee the payment of contributions to a plan, or the institution of various forms of appropriate legal action." *Id.*

Amici consider the use of mechanics liens a major tool in meeting their obligation to use diligent efforts to collect delinquent employer contributions. Without it, a significant amount of delinquent contributions will never be collected. This Court has noted "the uniquely temporary, transitory, and sometimes seasonal nature of much of the employment in the construction industry." *Jim McNeff, Inc. v. Todd*, 461 U.S. 260, 266, 103 S.Ct. 1753, 75 L.Ed.2d 830 (1983). Employers in the construction industry frequently go out of business, leaving no significant assets upon which to enforce a direct judgment for delinquent contributions. Mechanics liens are often the *only* source of recovery. *Amici* estimate they will lose several million dollars yearly without mechanics liens. The loss of this method of collection will have a noticeable and significant impact on the financial health of employee benefit plans in the construction industry.

III. STATE MECHANICS LIEN LAWS ARE AN INTEGRAL PART OF A NETWORK OF STATE AND FEDERAL LAWS PROTECTING THE WAGES OF WORKERS, INCLUDING THE PORTION OF WAGES ALLOCATED TO FRINGE BENEFITS

The California Supreme Court viewed § 3111 in isolation as a law which singles out ERISA plans. In fact though, § 3111 is but one part of a network of state and

federal laws establishing the priority of wages and fringe benefits, which Congress had no intention of disturbing.

Since biblical times,[7] our laws have recognized the special priority of a wage-earner's compensation among other debts. The California mechanics lien law was passed in the very first legislative session of this state.[8] It is firmly established in the Constitution of the State of California. Cal. Const. Art. XIV, § 3.[9]

By 1965, the trend of deferring part of a worker's overall compensation to fringe benefits had become prevalent in the construction industry. Recognizing this fact of modern compensation practices, the California legislature added subsection (d) to California Civil Code § 1182 (the predecessor of §§ 3110 and 3111) to make sure that fringe benefit contributions would be *included* rather than *excluded* from the wage package insured through mechanics liens. Cal. Stats. 1965, ch. 737, § 1 at 2148. This subsection was then codified in what is now § 3111, in 1969. Cal. Stats. 1969, ch. 1362, § 2 at 2761. The California legislature did not add any new substantive rights or causes of action by the amendment to § 1182, but merely recognized fringe benefits as part of the "value of labor" which had always been guaranteed by mechanics liens. *See Connolly Development, Inc. v. Superior Court,*

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[7] "Thou shalt not oppress a hired servant that is poor and needy, whether he be of thy brethren, or of the strangers that are in thy land within thy gates. In the same day thou shalt give him his hire, neither shall the sun go down upon it; for he is poor, and setteth his heart upon it; lest he cry against thee unto the Lord, and it be sin in thee." Deuteronomy 25:14-15.

[8] Cal. Stats. 1850, ch. 87, §§ 1-14 at 211-13; *see* Carey McWilliams, *California: The Great Exception* at 128 (1949).

[9] "Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens."

17 Cal. 3d 803, 827, 132 Cal. Rptr. 477, 553 P.2d 637 (1976), *appeal dismissed*, 429 U.S. 1056 (1977) ("The laborer and materialman have an interest in the specific property subject to the lien since their work and materials have enhanced the value of that property.") Nor does the mechanics lien law interfere in any way with the underlying obligation, as stated explicitly in another section of the mechanics lien law.[10]

On public works in California, § 3111 similarly provides the basis for the guarantee of payment of fringe benefits as part of the total compensation through a stop notice and payment bond. Cal. Civ. Code §§ 3181 and 3226. Contractors licensed in this State are required to maintain a bond which, among other things, guarantees the payment of fringe benefit contributions. Cal. Bus. & Prof. Code § 7071.5; *see Carpenters Southern California Administrative Corporation v. D & L Camp Construction Co.*, 738 F.2d 999 (9th Cir. 1984).

Congress completed the safety net for wages in the construction industry by passing the Miller Act, 40 U.S.C. § 270a, *et seq.*, requiring a bond on federal construction projects to guarantee the payment of wages. This Court held in *United States v. Carter*, 353 U.S. 210, 216-21, 77 S.Ct. 793, 1 L.Ed.2d 776 (1957), that Miller Act bonds guaranteed the payment of contributions to employee benefit plans as part of the employee's wages, and that the trustees had standing to assert these claims. The Court noted that the Miller Act was designed to supplement existing protections afforded by the states on non-federal jobs:

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[10] California Civil Code § 3152 provides that:

"Nothing in this title affects the right of a claimant to maintain a personal action to recover a debt against the person liable therefor either in a separate action or in the action to foreclose the lien, nor any right the claimant may have to the issuance of a writ of attachment or execution to enforce a judgment by other means."

> "The Miller Act represents a congressional effort to protect persons supplying labor and material for the construction of federal public buildings *in lieu of the protection they might receive under state statutes* with respect to the construction of nonfederal buildings. The essence of its policy is to provide a surety who, by force of the Act, must make good the obligations of a defaulting contractor to his suppliers of labor and material." *Id.* 353 U.S. at 216-17 (emphasis added).

In a receivership or other assignment for the benefit of creditors, wages and fringe benefit payments are given a priority under California Code of Civil Procedure § 1204.[11] This section was amended for the specific pur-

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[11] "When any assignment, whether voluntary or involuntary, and whether formal or informal, is made for the benefit of creditors of the assignor, or results from any proceeding in insolvency or receivership commenced against him, or when any property is turned over to the creditors of a person, firm, association or corporation, or to a receiver or trustee for the benefit of creditors, the following claims have priority in the following order:

"(a) Allowed unsecured claims for wages, salaries, or commissions, including vacation, severance and sick leave pay:

"(1) Earned by an individual within 90 days before the date of the making of such assignment or the taking over of such property or the commencement of such court proceeding or the date of the cessation of the debtor's business, whichever occurs first; but only

"(2) To the extent of two thousand dollars ($2,000) for each such individual;

"(b) Allowed unsecured claims for contributions to employee benefit plans:

"(1) Arising from services rendered within 180 days before the date of the making of such assignment or the taking over of such property or the commencement of such court proceeding or the date of cessation of the debtor's business, whichever occurs first; but only

"(2) For each such plan, to the extent of:

"(i) The number of employees covered by such plan multiplied by two thousand dollars ($2,000); less

"(ii) The aggregate amount paid to such employees under subdivision (a) of this section, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan . . . ."

pose of conforming to the priorities under the Bankruptcy Code, 11 U.S.C. § 507(a)(4).[12]

Thus, the state and federal legislatures each enacted these laws with the other in mind, in order to assure a *uniform* treatment of wages and fringe benefits as priorities under both jurisdictions. Congress enacted the Miller Bond Act to provide workers on federal projects the same protection as workers on private and state projects. California amended its priorities under state receiverships and assignments in order to provide the identical priorities as in federal bankruptcy proceedings. Contributions to fringe benefit funds was included in each as part of the protected compensation, either by court interpretation or by statute.

The decision of the court below, however, throws a monkey wrench into this system. Although only directed at § 3111, the holding of the California Supreme Court could apply just as well to laws such as California Business & Professions Code § 7071.5 and California Code of Civil Procedure § 1204, which, like § 3111, refer specifically to employee benefit plans in order to insure that they are included as part of the "wages" these sections protect. This is not mere speculation; these statutes are currently being challenged on those precise grounds, based on the holding of *El Capitan*.[13]

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[12] This statute formerly did not have any reference to fringe benefits. The California Supreme Court interpreted "wages" as including contributions to employee benefit funds. *Dunlop v. Tremayne*, 62 Cal.2d 427, 429-31, 42 Cal. Rptr. 438, 398 P.2d 774 (1965). The statute was subsequently amended to its present form in order provide the identical priorities for wages and fringe benefit contributions as the new Bankruptcy Act. Cal. Stats. 1979, ch. 394.

[13] A case is currently pending before the Appellate Department of the Los Angeles Superior Court in which California Business & Professions Code § 7071.5 is challenged as preempted by ERISA. *Carpenters Southern California Administrative Corporation v. Havens*, L.A.S.C. Case No. CIV A-18045.

This will result in absurd disparities in the protections of wages and fringe benefits. A worker on a private construction project who has part of wages deferred to contributions to an ERISA plan will have no protection for those contributions, while another worker on the job who participates in a non-ERISA fringe benefit arrangement will retain the right to a lien for full compensation, as will the workers across the street on a federal project. Workers whose employer goes through a receivership or an assignment to creditors will have no priority reserved for health and pension contributions, although they would if the employer had filed a bankruptcy petition instead.

The existing system of state and federal laws guaranteeing the payment of wages and benefits to employees through liens, bonds and priorities is of sufficient importance to warrant this Court's review before they are mangled beyond recognition in the name of federal preemption.

IV. THE DECISION OF THE CALIFORNIA SUPREME COURT WOULD SINGLE OUT AND DISCRIMINATE AGAINST EMPLOYEE BENEFIT PLANS, CONTRARY TO THE INTENT OF CONGRESS

"[T]he question whether a certain state action is preempted by federal law is one of congressional intent. ' " The purpose of Congress is the ultimate touchstone." ' " *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 45, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987), quoting *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 208, 105 S.Ct. 1904, 85 L.Ed.2d 206 (1985), quoting *Malone v. White Motor Corp.*, 435 U.S. 497, 504, 98 S.Ct. 1185, 55 L.Ed.2d 443 (1978), quoting *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103, 84 S.Ct. 219, 11 L.Ed.2d 179 (1963).

As illustrated by the above chain of citations, preemption analysis under ERISA (*Pilot Life*) has its roots in the preemption cases under § 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185 (*Allis-Chalmers*, *Malone* and *Retail Clerks*). This is no acci-

dent. Congress specifically referred to the broad sweep of preemption under § 301 in enacting ERISA in 1974:

> "All such actions [under ERISA § 502(a)] in Federal or State courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under section 301 of the Labor-Management Relations Act of 1947." H.R. Conference Report No. 93-1280 at 327 (1974).

"Congress was well aware that the powerful preemptive force of § 301 of the LMRA displaced all state actions for violations of contracts between an employer and a labor organization, even when the state action purported to authorize a remedy unavailable under the federal provision." *Pilot Life, supra*, 481 U.S. 41 at 55. In fact, § 301 had been the basis for collecting delinquent plans prior to ERISA. *See Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 80 S.Ct. 489, 4 L.Ed.2d 442 (1960) (trustees are third party beneficiaries of collective bargaining agreement).

In all the time that § 301, with its own broad preemptive power, had been the basis for collecting delinquent contributions, not once had § 301 been held to preempt state remedies providing for liens, priorities, bonds, or other ancillary methods of collecting wages and fringe benefits. These laws also "authorized a remedy unavailable under the federal" law, yet they coexisted with these federal laws at the time ERISA was passed in 1974. Congress had no intention of altering the state of preemption under § 301, and said as much in the final paragraph of the ERISA preemption section:

> "(d) Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1337(b) of this title) or any rule or regulation issued under any such law."

Thus, when Congress referred to the preemptive effect of the LMRA in adopting ERISA's preemption provisions,

it had no reason to believe that such preemption would extend to liens, priorities, bonds, or other ancillary methods of collecting fringe benefit contributions. The provisions of the LMRA, including the case law developed under them, were specifically preserved by ERISA § 514(d), 29 U.S.C. § 1144(d). "There is no evidence in the legislative history that Congress found fault with the court's application of 29 U.S.C. § 185(a) to lawsuits involving pensions or that it intended to render that application obsolete." *Bugher v. Feightner*, 722 F.2d 1356, 1359 (7th Cir. 1983), *cert. denied*, 469 U.S. 822 (1984) (right to jury trial in suit to collect delinquent contributions under ERISA same as in § 301 suit). There is simply no basis for ascribing a congressional intent to preempt mechanics lien laws which had coexisted with § 301 by the enactment of ERISA in 1974.

The court below, however, ascribes such an intent, relying on the discussion of the legislative history in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 52-54, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987). In *Pilot Life*, this Court held that the civil enforcement scheme for benefit claims by participants was meant by Congress to be exclusive. 481 U.S. at 52-54. *Pilot Life* did not deal with enforcement of the obligation to contribute by employers. The significant fact which the California Supreme Court overlooked is that *the "civil enforcement scheme" of ERISA § 502(a), as originally enacted, did not provide a mechanism for collection of delinquent contributions*, as it did for the enforcement of benefit claims. Although Congress has been accused of flights from reason, it would make no sense at all to conclude that Congress intended to preempt all state law remedies to assure the payment of contributions, without providing any federal remedy, in a law whose stated purpose was to strengthen and guarantee these same employee benefit plans.

The California Supreme Court points to ERISA § 502(a)(3)(B)(ii), 29 U.S.C. § 1132(a)(3)(B)(ii), as the

source of a federal claim for relief under ERISA to collect delinquent contributions prior to 1980.[14] However, that subsection provides an ambiguous cause of action at best. The "provisions of this title" at the time ERISA § 502 was adopted imposed no obligation to contribute to employee benefit plans. The obligation to contribute was usually found in the collective bargaining agreement, not necessarily "the terms of the plan" which could be enforced through ERISA. Reading this section to provide a federal claim for delinquent contributions would also create a conflict with LMRA § 301. This provision of ERISA is among those over which the federal courts were to have *exclusive* jurisdiction under ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1). Section 301 of the LMRA, on the other hand, allowed concurrent jurisdiction between state and federal courts. *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 101, 82 S.Ct. 571, 7 L.Ed.2d 593 (1962). In any case, actions to collect delinquent contributions continued to be brought under LMRA § 301 before 1980. *See, e.g., Audit Services, Inc. v. Rolfson*, 641 F.2d 757, 760 (9th Cir. 1981); *Seymour v. Hull & Moreland Engineering*, 605 F.2d 1105, 1109 (9th Cir. 1979).

In fact, it was Congress' dissatisfaction with the defenses and remedies in court cases brought under LMRA § 301 which was among the reasons for enacting the Multi-Employer Pension Plan Amendments Act of 1980, 94 Stat. 1209, et seq. "Recourse available under current law for collecting delinquent contributions is insufficient and unnecessarily cumbersome and costly." 126 Cong. Rec. 23039 (1980) (remarks of Rep. Thompson). Representative Thompson, one of the House Managers of the

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[14] "[a] civil action may be brought— . . . [¶] (3) by a participant, beneficiary, or *fiduciary* . . . (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan or (B) to obtain other appropriate relief (i) to redress such violations or (ii) *to enforce the provisions of this title or the terms of the plan.*" Quoted in *El Capitan*, 282 Cal. Rptr. 277 at 283, 811 p.2d 296 at 302 (emphasis supplied in *El Capitan* decision).

bill, went on to list those cases which the Conference Committee approved [15] and disapproved.[16] It is significant to note that all of the cited cases were decided under LMRA § 301, not ERISA.

Congress' solution was to "clarify the law in this regard by providing a *direct unambiguous ERISA cause of action* to a plan against a delinquent employer." *Id.* (emphasis added). Obviously, Congress did not believe a direct, unambiguous ERISA cause of action to exist prior to these amendments. "The bill imposes a federal statutory duty to contribute on employers already contractually obligated to make contributions to multi-employer plans." Staff Report of the Senate Committee on Labor and Human Resources, S. 1076, 96th Cong., 2d Sess. at 44 (1980).

Section 515 was added to ERISA to provide an express claim for relief under ERISA for delinquent contributions:

> "Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement."

Section 502 was also amended at the same time to add provisions for interest, liquidated damages, attorneys fees, costs, and other relief in the enforcement of the obligation to contribute. 29 U.S.C. § 502(g)(2). These provisions were not intended to be merely duplicative of

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[15] *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 80 S.Ct. 489, 4 L.Ed.2d 442 (1960); *Huge v. Long Hauling Co.*, 590 F.2d 457 (3rd Cir. 1978), *cert. denied*, 442 U.S. 918 (1979); *Lewis v. Mill Ridge Coals, Inc.*, 298 F.2d 552 (6th Cir. 1962).

[16] *Washington Area Carpenter Welfare Fund v. Overhead Door Co.*, 488 F. Supp. 816 (D.C. D.C. 1980), *rev'd*, 681 F.2d 1 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 926 (1983); *Washington Laborers-Employers Health & Security Trust Fund v. McDowell*, 103 L.R.R.M. 2219 (W.D. Wash. 1979).

the remedies already provided under § 301 of the LMRA, but were a "potent new weapon previously unavailable to plans under § 301 of the LMRA." *Laborers Health & Welfare Trust v. Advanced Lightweight Concrete*, 484 U.S. 539, 549 n.16, 108 S.Ct. 830, 98 L.Ed.2d 936 (1988). The stated purpose was to "promote the prompt payment of contributions and assist plans in recovering the costs incurred in connection with delinquencies." Staff Report of the Senate Committee on Labor and Human Resources, S. 1076, 96th Cong., 2d Sess. at 44 (1980).

It is thus the legislative history of the 1980 amendments, which first provided an ERISA remedy for delinquent contributions, which must be examined to determine if Congress intended to preempt state mechanics lien laws, not the 1974 Act which had no such provisions. In fact, the legislative history of the 1980 amendments specifically address the intent of Congress regarding preemption:

> "The Bill preempts any state or other law which would prevent the award of reasonable attorneys' fees court costs or liquidated damages, or which would limit liquidated damages to an amount below the twenty percent level. However, the bill does not preclude the award of liquidated damages in excess of the twenty percent level if an award of such a higher level of liquidated damages is permitted under state or other law. *The Committee Amendment does not change any other type of remedy permitted under state or federal law with respect to delinquent multiemployer contributions.*" House Report No. 96-869 (II) on H.R. 3909 of the House Committee on Ways and Means, 96th Cong., 2d Sess. (1980) (emphasis added).

Congress could not have been more clear. Even without such an explicit statement of intent, it is not difficult to see that preemption of state mechanics lien laws would be diametrically opposed to the purpose of the 1980 amendments.

By excluding contributions to ERISA plans from the value of labor guaranteed by the state mechanics lien law, it is the decision of the California Supreme Court itself which should be held preempted.[17] California "singles out ERISA employee welfare plans for different treatment under" the mechanic lien law, as interpreted by the California Supreme Court, by specifically excluding them. *Mackey v. Lanier Collections Agency & Service*, 486 U.S. 825, 830, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988). In *Mackey*, this Court found the portion of Georgia's garnishment law which specifically *exempted* ERISA pension plans from garnishment rights to be preempted because of this "different treatment" from other garnishees. *Id.*, 486 U.S. at n.4. The exclusion of contributions to ERISA plans from California mechanic liens should similarly be held preempted.

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[17] The preemption clause of ERISA broadly defines the "laws" it supersedes as including "decisions . . . having the effect of law" as well as actual legislative enactments. ERISA § 514(c)(1), 29 U.S.C. § 1144(c)(1).

CONCLUSION

The mechanics lien law found preempted by the court below is of vital importance to employee benefit plans, such as *Amici*, as a method of collecting contributions to provide the benefits for which the plans are designed. This decision affects not only the California mechanics lien law, but the entire network of state and federal laws designed to assure American workers payment of the full value of their labor, including the contributions to ERISA plans. It is the *exclusion* of contributions to ERISA plans from state property and collection laws which should be held preempted. Certiorari should be granted to clarify the law of ERISA preemption which has become muddled by the lower courts and threatens the very interests which ERISA was meant to protect.

Respectfully submitted,

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